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Attorney for Plaintiff
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	Civ. No. CV03 00385 SOM-LEK
	)	(Copyright)
Plaintiff,)	
	)	DECLARATION OF TIMOTHY J.
vs.	)	HOGAN IN SUPPORT OF
	)	PLAINTIFF WAYNE BERRY'S
HAWAIIAN EXPRESS SERVICE,	)	REPLY TO DEFENDANT PCT'S
INC., a California corporation; et al.	)	AND EMPLOYEE DEFENDANTS'
	)	OPPOSITION TO PLAINTIFF
Defendants.	)	WAYNE BERRY'S AMENDED
	)	MOTION FOR NEW TRIAL
	)	FILED ON 3/21/06, OR IN THE
	)	ALTERNATIVE, MOTION FOR
	)	RECONSIDERATION AND RULE
	)	60(B) RELIEF; EXHIBITS 1 TO 8
_____)	

**DECLARATION OF TIMOTHY J. HOGAN IN SUPPORT OF
PLAINTIFF WAYNE BERRY'S REPLY TO DEFENDANT PCT'S AND
EMPLOYEE DEFENDANTS' OPPOSITION TO PLAINTIFF WAYNE
BERRY'S AMENDED MOTION FOR NEW TRIAL FILED ON 3/21/06, OR
IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION AND
RULE 60(B) RELIEF**

I, TIMOTHY J. HOGAN, am an attorney licensed to practice before all the courts of Hawaii and I make this declaration under penalty of perjury. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters contained herein, I am competent and willing to do so.

1. Attached hereto as Exhibit "1" is a true and correct copy of the Declaration of Brian Christensen filed herein in support of oppositions to the Plaintiff's Motion for Permanent Injunction, on January 12, 2006 as Docket No. 760.

2. Attached hereto as Exhibit "2" is a true and correct copy of an email dated August 2, 2002 from Mr. Smith to Mr. Christensen and others. I copied this email from the Guidance Before image files produced by Mr. Smith. This exhibit is filed separately under seal.

3. Attached hereto as Exhibit "3" is a true and correct copy of an email dated October 10, 2002 from Mr. Smith to Fleming employees. I copied this email from the Guidance Before image files produced by Mr. Smith. This exhibit

is filed separately under seal.

4. Attached hereto as Exhibit “4” is a true and correct copy of an email dated November 25, 2002 from Teresa Noa copying Brian Christensen. I copied this email from the Guidance Before image files produced by Mr. Smith.

5. Attached hereto as Exhibit “5” is a true and correct copy of an email dated December 5, 2002 from Mark Dillon to Teresa Noa. I copied this email from the Guidance Before image files produced by Mr. Smith.

6. Attached hereto as Exhibit “6” is a true and correct copy of an email dated March 7, 2003 from Brian Christensen to Fleming employees forwarding an email of the previous day. I copied this email from the Guidance Before image files produced by Mr. Smith. This exhibit is filed separately under seal.

7. On April 7, 2006, two days after discovering the email that was on the Before Image drive I obtained on January 1, 2006, I sent the email to counsel for the PCT and Mr. Christensen seeking their comment. I have received no comment from them and to my knowledge they have done nothing to remedy this false testimony. A true and correct copy of that email is attached as Exhibit “7.”

8. I had to wait until the official transcripts were complete before citing to the trial testimony. The trial transcripts weren’t available to me until May 1, 2006. I was informed the Court Reporter was out of town on vacation prior to this

time.

9. Attached hereto as Exhibit “8” is a true and correct copy of the Court’s Order regarding the denial of a permanent injunction filed on March 9, 2006 as Docket No. 855.

DATED: Honolulu, Hawaii, May 28, 2006.

/s/ Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Plaintiff WAYNE BERRY

DECLARATION OF TIMOTHY J. HOGAN IN SUPPORT OF PLAINTIFF WAYNE BERRY’S REPLY TO DEFENDANT PCT’S OPPOSITION TO PLAINTIFF WAYNE BERRY’S AMENDED MOTION FOR NEW TRIAL FILED ON 3/21/06, OR IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION AND RULE 60(B) RELIEF; EXHIBITS 1 TO 8